Supreme Court, U.S.
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No. 94-674

In The

Supreme Court of the United States

October Term, 1994

ALICE ALLEN and LAURA FEINNER,

Plaintiffs and *Petitioners,*

vs.

CITY OF DUARTE and DUARTE REDEVELOPMENT AGENCY,

Defendants and *Respondents.*

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate District, Division Four

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does this Court have jurisdiction under 28 U.S.C. § 1257 to grant certiorari to consider Petitioners' due process claim notwithstanding that claim was not presented to nor passed upon by the state courts below?

2. Does this Court have jurisdiction under the case or controversy requirement in Article III of the United States Constitution and the Court's prudential standing doctrine to entertain Petitioners' due process and equal protection claims in light of Petitioners' failure to allege or prove that they have any personal stake in the outcome of the case?

3. Do the due process and equal protection clauses of the Fourteenth Amendment require the California courts to grant standing allowing Petitioners to challenge an action of a municipality in which action the Petitioners have no personal stake or interest?

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Respondents City of Duarte and Redevelopment Agency of the City of Duarte (collectively, "Duarte") respectfully request that this Court deny Petitioners' Petition for a Writ of Certiorari (the "Petition") to review the judgment of the California Court of Appeal, Second Appellate District, Division Four, filed April 14, 1994.

OPINIONS BELOW

In addition to the lower court opinions set forth as Appendices A-E to the Petition, Duarte is providing to this Court as Appendix A to this Respondents' Brief the Court of Appeal's April 14, 1994, Order Re Partial Dismissal of Appeal and Directing Superior Court to Enter New Judgment in Favor of City of Duarte and Redevelopment Agency of the City of Duarte.

JURISDICTION

Petitioners have invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

Duarte respectfully submits that this Court does not have jurisdiction under 28 U.S.C. § 1257 to consider Petitioners' due process claim. That statute requires that in the state courts Petitioners have "specially set up or claimed under the Constitution . . . of . . . the United States" the right which they now seek to have this Court enforce. *Webb v. Webb*, 451 U.S. 493, 495; see also, *Illinois v. Gates*, 462 U.S. 213, 221-223 (1983).

The Petition correctly notes, in compliance with this Court's Rule 14.1(h), that Petitioners raised their equal protection argument before both the California Court of Appeal (in a Petition for Rehearing) and the California Supreme Court (in a Petition for Review). Petitioners do not contend, however, that they have previously raised their due process claim. They did not. The claim is being asserted for the first time in the Petition filed with this Court.[1]

Neither the California Court of Appeal nor the California Supreme Court passed upon Petitioners' equal protection or due process claims.

Duarte also respectfully submits that Petitioners lack standing to sue (as the Court of Appeal below correctly found) and therefore that this Court lacks jurisdiction under Article III of the United States Constitution and the Court's well-articulated standing doctrine.

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[1] The due process claim that Petitioners now assert is that the Court of Appeal's rejection of Petitioners' standing to sue denied them their constitutional right of access to the courts. In their Petition for Review to the California Supreme Court (at pp. 21-23), Petitioners did raise a *different* due process claim – that they were denied a meaningful opportunity to brief and argue the standing issue upon which the Court of Appeal decision was based. Petitioners did not raise that other due process claim in their Petition before this Court; accordingly, that issue has been abandoned.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, Section 2 of the United States Constitution provides in part:

> The judicial Power shall extend to all Cases . . . arising under this Constitution . . . ; – to Controversies. . . . "

The Fourteenth Amendment to the United States Constitution provides in part:

> . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a) provides in part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution . . . of . . . the United States.

Duarte also refers in this Respondents' Brief to several California statutory provisions: California Code of Civil Procedure § 526a; California Government Code § 65589.3; former California Health and Safety Code §§ 33012 and 33367(d)(12), which were repealed by Stats. 1993, c. 942; and California Health and Safety Code §§ 33334.2 and 33670. The pertinent text of these statutory provisions is set forth in Appendix B hereto.

STATEMENT OF THE CASE

A. The Redevelopment Plan Amendment.

This case involves Petitioners' challenge to the validity of a minor amendment to a redevelopment plan that was adopted and approved by Duarte in June of 1990. The *only* substantive change that Duarte made to the original redevelopment plan at that time was the addition of the optional provisions in the California Community Redevelopment Law (California Health and Safety Code § 33000 *et seq.*) authorizing Duarte to implement the plan with the help of property tax increment financing.[2] Based on its experience in attempting to implement its original redevelopment plan *without* tax increment financing, Duarte determined that the collection of tax increment revenues was needed "to fully implement the provisions of the Redevelopment Plan" since the "costs of property

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[2] As stated by the California Supreme Court, property tax increment financing works as follows (when utilized):

> In essence [California Health and Safety Code Section 33670] provides that if, after a redevelopment project has been approved, the *assessed valuation of taxable property* in the project increases, the taxes levied on such property in the project area are divided between the taxing agency and the redevelopment agency. The taxing agency receives the same amount of money it would have realized under the assessed valuation existing at the time the project was approved, while the additional money resulting from the rise in assessed valuation is placed in a special fund for repayment of indebtedness incurred in financing the project.

Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 259; emphasis in original.

acquisition in the . . . Project Area have exceeded [earlier] cost estimates." (See, generally, Court of Appeal opinion, Appendix A to Petition, pp. 3-A to 4-A.)

B. The Three Lawsuits Challenging The Redevelopment Plan Amendment.

In July and August of 1990, three separate lawsuits challenging the validity of Duarte's 1990 redevelopment plan amendment were filed in Los Angeles County Superior Court: one suit was filed by the County of Los Angeles (the "County") and its affiliated taxing entities (the Los Angeles County Flood Control District, the Los Angeles County Public Library, and the Consolidated Fire Protection District of Los Angeles County); the second lawsuit was filed by the Citrus Community College District ("Citrus"); and, finally, a third action was filed by the two individual Petitioners still before this Court.

C. Settlement of the Other Two Lawsuits.

Duarte ultimately settled the lawsuits filed by the County and Citrus. The primary thrust of those lawsuits was to challenge Duarte's finding at the time the redevelopment plan amendment was adopted that the tax increment financing provisions being added to the redevelopment plan would not cause a "significant financial burden or detriment" on the affected taxing entities.[3]

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[3] See (former) California Health and Safety Code Sections 33012 and 33367(d)(12). It is noteworthy that the entire concept of a redevelopment project's imposition of "financial burden or

While not acknowledging that any financial "mitigation" was legally required,[4] shortly prior to the oral argument at the Court of Appeal level Duarte agreed to pay to the County and its affiliated taxing entities eighty percent

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detriment" on taxing agencies was recently repealed by the California Legislature and no longer exists effective January 1, 1994. (See *Stats.* 1993, c. 942, §§ 2, 15-20, and 22.)

[4] As noted in *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1044, tax increment financing is essentially self-supporting and does not result in a "loss" of funds to other taxing entities:

> The assertion that [a] redevelopment project will 'divert' revenue from local taxing entities is questionable. . . . [T]he redevelopment project *pays for itself* by taking advantage of increased property tax revenues generated by the project area's renovation. (*Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d, 24, 27; [other citations omitted].) *Consequently, absent a redevelopment project, it is doubtful local taxing agencies would receive increased revenues from property within the project area.* (Emphasis added.)

Furthermore, even assuming that Duarte's collection of tax increment revenues resulted in a dollar-for-dollar "diversion" of property tax revenues from the County, the undisputed evidence in the administrative record was that the County's "share" of tax increment revenues from the area in question amounted to only about .001% of the County's annual budget. Thus, the "loss" of these funds to Duarte could hardly be seen as causing a "significant financial burden or detriment" under the prior law. With regard to Citrus, the "impact" was even more remote. (See Administrative Record, hereinafter "A.R.," filed with Court of Appeal, at pp. 432, 565-566, and 819-820.) Finally, since the State of California was legally obligated to reimburse Citrus dollar-for-dollar for any local property tax revenue "lost" to redevelopment, Citrus was totally unaffected by the addition of tax increment financing provisions to Duarte's redevelopment plan.

(80%) of their "share" of the tax increment revenues. Duarte further agreed to "pass through" to Citrus forty-eight percent (48%) of its "share" of the tax increment revenues from the project. (See Court of Appeal opinion, Appendix A to Petition, at 5-A n. 2 and 22-A.) Based upon the resolution of their financial differences, Duarte, the County, and Citrus then jointly filed with the Court of Appeal a stipulation requesting that the County's and Citrus's appeals be dismissed with prejudice, the judgment entered at the trial court level against Duarte be reversed, and the matter be remanded to the Superior Court for entry of a new judgment in favor of Duarte. The Court of Appeal signed its order implementing this settlement and stipulation on April 14, 1994. (Appendix A hereto.)

D. Petitioners' Lack of Standing and the Court of Appeal Opinion.

Duarte was unable to settle the lawsuit filed by Petitioners. While significant portions of Petitioners' lawsuit were mooted prior to hearing and determination by the Court of Appeal,[5] Petitioners persisted in their legal challenge and the Court of Appeal eventually disposed of

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[5] Duarte's financial settlement with the County and Citrus also resolved Petitioners' Fifth Cause of Action which echoed the County's and Citrus's claims that Duarte's redevelopment plan amendment imposed a "significant financial burden or detriment" on the County and Citrus under (former) California law. (See n. 3 *ante*.) In addition, in March of 1993, Duarte updated the Housing Element of its General Plan that was attacked by Petitioners in their Seventh Cause of Action. On June 22, 1993, the new Housing Element was certified by the California Department of Housing and Community Development ("HCD") as being in full compliance with all requirements

their action by finding that Petitioners lacked the requisite personal stake in what was left of the case to give them standing to sue.

Petitioners have mischaracterized both the facts in the record regarding their lack of standing and the Court of Appeal's analysis and holding on this issue.

Contrary to Petitioners' assertion (Petition, p. 18), the Court of Appeal did not rule that Petitioners lacked standing simply because they "did not pay a tax on real property located in Duarte." Petitioners seek to characterize the Court of Appeal decision as one holding that only property owners and property taxpayers have standing to challenge certain governmental decisions in California. Nothing could be further from the truth.

The simple truth is that Petitioners had no personal stake in the outcome of the action. Petitioners did not allege that they were residents or taxpayers within the redevelopment project area in question. Nor did they allege or prove that the challenged redevelopment plan amendment would cause them any personal harm.[6] As

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of law. Under California Government Code § 65589.3, HCD certification established a rebuttable presumption of the validity of the Housing Element. In the 20 months that have passed since Duarte's new Housing Element was adopted, no one (including Petitioners) has challenged its validity.

[6] Petitioners did allege that they were lower income persons living in rental housing who were interested in general in the provision of affordable housing in the community. They completely failed to connect these stated concerns, however, to any adverse impact resulting from Duarte's approval of the challenged redevelopment plan amendment. Indeed, Duarte

the Court of Appeal noted, Petitioners' standing allegations to challenge Duarte's redevelopment plan amendment were based upon nothing more than "mere residency [in another area of the city] and the payment of an unspecified tax within the defendant city." (Appendix A to the Petition at 19-A.) The Court of Appeal carefully analyzed analogous California case law and came to the rather unremarkable conclusion that these allegations, without more, were insufficient to confer standing. (*Id.*)

The discussion in the Court of Appeal opinion about Petitioners not being property owners or property taxpayers was in response to Petitioners' own attempt to base their standing upon California Code of Civil Procedure § 526a, a taxpayer standing statute. As Petitioners correctly note (Petition at 21), this statute has been liberally interpreted by the California courts over the years to grant broad standing to municipal taxpayers to challenge illegal or wasteful expenditures of public funds in circumstances where traditional standing requirements might otherwise bar suit. At a minimum, however, in

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repeatedly pointed out to the California courts that addition of tax increment financing provisions to Duarte's previously adopted redevelopment plan could only advance Petitioners' professed goal of promoting more affordable housing. Pursuant to California Health and Safety Code § 33334.2(a), Duarte is obligated to expend fully twenty percent (20%) of any tax increment revenue received for the purpose of "increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost." If Petitioners were truly concerned about strengthening Duarte's affordable housing policies and programs, as they have claimed to be, they should be applauding Duarte's efforts, not opposing them!

order for one to take advantage of the broad taxpayer standing statute, one must be a taxpayer. Petitioners are not. Petitioners acknowledged that they were not property owners or taxpayers either within the redevelopment project area or anywhere within the City of Duarte, nor did they allege or prove what other kind of tax they might have paid to Duarte that would authorize a suit to be maintained based on California's liberal taxpayer standing statute.[7]

The Court of Appeal did not rule that similarly situated property owners and taxpayers necessarily have standing to sue in the circumstances in which Petitioners were denied standing. For example, in *Torres v. City of Yorba Linda*, 13 Cal.App.4th 1035 (1993), a recent case relied upon heavily by the Court of Appeal, it was held that a plaintiff's allegations of payment of taxes on real property located outside the city in question were insufficient tc confer standing to challenge a redevelopment plan. Conversely, the Court of Appeal did not hold that persons residing within a city cannot establish the requisite standing to sue unless they own property. If Petitioners had been able to demonstrate some personal stake

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[7] Even if the Court of Appeal had limited standing to sue to property taxpayers, which it did not, there would have been a rational basis for such a ruling. As stated above, the *only* change effected by the challenged redevelopment plan amendment was the reallocation of property tax revenues from the various taxing entities whose jurisdiction encompasses the redevelopment project area to the Duarte Redevelopment Agency. It seems reasonable that the property taxpayers paying these taxes would have a more significant interest in their expenditure than would persons who pay no taxes at all.

in the outcome of this action, such as any credible evidence that Duarte's adoption of the redevelopment plan amendment would deprive Petitioners of affordable housing opportunities, there is no question that the Court of Appeal would have upheld their standing to sue. Petitioners simply failed to carry this very minimal burden.

REASONS FOR DENYING THE WRIT

A. This Court Lacks Jurisdiction Under 28 U.S.C. § 1257 to Consider Petitioners' Due Process Claim Since That Claim was not Presented to Nor Passed Upon by the State Courts Below.

As stated above in the "Jurisdiction" section of this Brief, Petitioners never argued to the State courts that denying them standing constituted a denial of their Fourteenth Amendment due process right to access to the courts.

In their Petition (at p. 20), Petitioners also make a passing reference to their First Amendment right to petition the Government for a redress of grievances. This is not one of the questions formally presented in support of the Petition. In any event, Petitioners did not raise any First Amendment claims at the State court level either.

Duarte acknowledges that Petitioners might have a legitimate excuse for not raising the federal constitutional issues prior to the Court of Appeal's initial decision, since prior to that time Duarte's standing arguments were more narrowly framed. (See Court of Appeal opinion, Appendix A to Petition, at 10-A to 12-A.) Even being

most charitable to Petitioners, however, Petitioners did have an opportunity – which they failed to exercise – to raise their due process (and First Amendment) arguments in their Petition for Rehearing at the Court of Appeal level and in their Petition for Review with the California Supreme Court. They did not.

B. Petitioners Lack Standing to Raise Their Due Process and Equal Protection Claims in This Court.

Petitioners lack the requisite standing to raise their due process and equal protection claims in this Court.

> Generally stated, federal standing requires an allegation of a present or immediate injury in fact, where the party requesting standing has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues." [Citation omitted.] There must be some causal connection between the asserted injury and the challenged action, and the injury must be of the type "likely to be redressed by a favorable decision." [Citations omitted.]

Phillips Petroleum Company v. Shutts, 472 U.S. 797, 804 (1985). This Court has relied upon these well-settled rules to deny standing to a plaintiff who, like the Petitioners here, asserted a generalized interest in the provision of affordable housing without putting forth "specific, concrete facts demonstrating that the challenged [exclusionary zoning] practices harm him, and that he personally would benefit in a tangible way from the court's intervention." *Warth v. Seldin*, 422 U.S. 490, 508 (1975); compare

Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

To the extent Petitioners' standing claim is based upon their vague allegation that they paid some unspecified tax to Duarte, the claim is similarly insufficient to support federal court standing. See, e.g., *Warth v. Seldin, supra*, 422 U.S. at 509 (taxpayer challenging alleged exclusionary zoning practices of defendant municipality must demonstrate causal nexus between defendant's action and increase in plaintiff's taxes) and *Doremus v. Board of Education*, 342 U.S. 429, 433-434 (1952) (held: municipal taxpayer qua taxpayer had no standing to attack, on appeal from the state courts to the United States Supreme Court, the constitutionality of a state statute providing for the reading of Bible verses at the opening of each public school day, in the absence of proof of "a direct dollars-and-cents injury."). This is not "a good-faith pocketbook action." (*Id.*) Petitioners do not even attempt to demonstrate how any of their tax dollars would be illegally or wrongfully spent by Duarte or how their tax burden would be increased if the challenged redevelopment plan amendment is allowed to stand.

In summary, the Article III "case or controversy" requirement and the prudential standing principles enunciated by this Court in previous decisions bar Petitioners' attempt to invoke the Court's jurisdiction.

C. By Petitioners' Own Admission, The Court of Appeal Decision is an Isolated Case of No Precedential Effect. No Significant Public Purpose Would be Achieved by Devoting This Court's Precious Resources To a Reconsideration Of The Standing Issue.

Petitioners correctly note that the Court of Appeal decision was unpublished and therefore cannot be cited as precedent in any future case in California. (Petition, p. 22 n. 8.) Petitioners do not find fault with published California standing law that does have precedential value. (*Id.*) Thus, at most, Petitioners are asking this Court to devote its scant resources to righting an isolated wrong that will not recur. This hardly seems a compelling case for exercise of this Court's discretionary jurisdiction, particularly in a case in which Petitioners have no personal stake in the outcome anyway.

Petitioners do not contend that this Court's standing rules need any reconsideration or polishing. At most, this case would require the Court to apply settled law to a peculiar factual situation. Duarte respectfully submits that no valid public purpose is served by ordering the California courts to entertain litigation filed by individuals who lack standing under traditional standing rules.

D. On the Merits, Petitioners Have Failed to Raise a Substantial Federal Question.

In order for Petitioners to make out a cognizable constitutional claim for deprivation of their property rights under the Fourteenth Amendment, they must necessarily identify what property interest is involved. Here,

it appears that the only "property" right Petitioners assert is the right to file a lawsuit challenging a governmental action in which Petitioners have no personal interest. Not surprisingly, Petitioners fail to specify the source of this non-existent property interest.

If litigants had federally guaranteed constitutional rights to file lawsuits notwithstanding their lack of any personal stake in the outcome of those lawsuits, both the constitutional and prudential standing limitations applied by this Court and other federal and state courts would all be blown away. The courts in these circumstances would be opened wide to all manner of lawsuits based upon academic and hypothetical disputes.

Boddie v. Connecticut (1971) 401 U.S. 371, the lead case cited by Petitioners in support of their argument regarding a right to access to the courts, is easily distinguishable. In that case, the plaintiffs were indigent women desiring to obtain divorces but barred from doing so because of their inability to pay required court filing fees and costs. They indisputably had standing but were effectively denied access to the courts. This Court ruled that "given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." (*Id.* at 374.) Here, by contrast, the whole point of the Court of Appeal decision is that Petitioners have no business seeking an adjudication of a dispute in which they have no interest. *Boddie* certainly does not support abrogating the standing doctrine and opening

the federal and state courts to a flood of lawsuits by disinterested litigants.

It is noteworthy that Petitioners also cite *United States v. Kras*, 409 U.S. 434 (1973), in support of their position. That case involved a challenge to a statutory requirement for the payment of filing fees as a condition precedent to obtaining a discharge in bankruptcy. The petitioner in that case alleged that he was unable to pay the filing fee and, relying upon *Boddie*, argued that the bankruptcy court's refusal to accept his petition denied his constitutional right of access to the courts. This Court rejected the claim. Notwithstanding the strong personal stake that the petitioner had in the case, this Court nevertheless distinguished *Boddie*, determined that there was no fundamental interest gained or lost depending on the availability of a discharge in bankruptcy, and upheld the filing fee requirement. If an indigent effectively can be denied access to the courts to file a bankruptcy petition without violating his constitutional rights, *ipso facto* an individual can be denied access to pursue a claim in which he or she has no personal interest. The right of access to the courts does not supersede the standing doctrine.

Petitioners' equal protection claim is just as far-fetched. For starters, Petitioners fail to clearly identify the class of persons allegedly being discriminated against here. They imply that the discriminated class is composed of persons who do not own property. If this is their point, they again overlook the fact that the Court of Appeal, relying upon *Torres*, *denied* standing to a property owner to challenge the very type of governmental decision challenged here. Some property owners have standing and some do not and some renters have standing and some

do not. The ultimate question for purposes of the standing doctrine, as the Court of Appeal correctly noted, is whether the plaintiff shows that "he or she or those he or she properly represents have either suffered or are threatened with an injury of sufficient magnitude that it is reasonably assured the lawsuit will provide an adequate presentation of all relevant facts and issues." (See Petition, Appendix 12-A, quoting from *Torres*.) Petitioners' problem is that they could not satisfy this standard.

Petitioners' reliance upon voting rights cases in support of their equal protection claim is totally misplaced. (See Petition at 24-27, citing *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970), *Cipriano v. City of Houma*, 395 U.S. 701 (1969), and *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).

First of all, and to repeat a point made above, the Court of Appeal in this case did *not* hold that property owners have standing to sue and non-property owners do not. Thus, the legislative (or judicial) classification that Petitioners seek to set up as the premise for their equal protection discrimination argument simply does not exist. Moreover, one must again focus upon the nature of the right that is being asserted. No more fundamental right can be imagined in a free and democratic society than the right to vote in governmental elections involving agencies which have significant effects on all citizens.[8] By

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[8] Even in the voting rights field, it is noteworthy that this Court has rejected equal protection challenges to landowner – only voting schemes involving limited purpose governmental agencies of primary interest to landowners. See, e.g., *Ball v. James*, 451 U.S. 355 (1981) (agricultural improvement and power

contrast, there are no fundamental rights implicated, indeed no rights at all, when persons without a personal stake in the outcome of a lawsuit, whether property owners or tenants, are denied standing to sue.

Petitioners acknowledge that the "rational relationship" test applies in considering their equal protection challenge. (Petitioner at 24-25.) To the extent that California Code of Civil Procedure § 526a limits taxpayer standing to taxpayers, there is certainly a rational basis for the legislative classification. Presumably, taxpayers can be expected to have a greater concern with the illegal or improvident expenditure of public funds. Persons such as Petitioners who have failed to prove that they paid any particular tax (whether a property tax or otherwise) lack the same interest. *Doremus, supra*; see also, *Flast v. Cohen*, 392 U.S. 83, 102-103 (1968). No better example can be provided than the redevelopment plan amendment challenged in this case. The only substantive change effectuated by the plan amendment was to transfer from other taxing entities to the Duarte Redevelopment Agency the authority to receive property tax increment revenues from within the redevelopment project area boundaries. It would be reasonable and rational for the California Legislature to conclude in these circumstances that traditional standing rules should be relaxed and property taxpayers be given the right to sue. Having opened the courtroom door a bit wider than may have been required

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district); *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (watershed improvement district); and *Salyer Land Company v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) (water storage district).

to allow taxpayers to sue, however, does not require the Legislature to eliminate all standing barriers and to permit other persons with absolutely no interest in the redevelopment plan amendment to sue as well. Stated another way, Petitioners are not similarly situated to taxpayers whose tax funds are affected.

CONCLUSION

For the foregoing reasons, Respondents City of Duarte and Redevelopment Agency of the City of Duarte respectfully submit that the Petition for a Writ of Certiorari in this case should be denied.

Respectfully submitted,

JEFFREY M. ODERMAN
RUTAN & TUCKER

APPENDIX A

2nd Civil No. 067380

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITRUS COMMUNITY COLLEGE DISTRICT,

Plaintiff/Respondent,

v.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants/Appellants.

AND RELATED CONSOLIDATED CASES.

Appeal from the Superior Court of the
Los Angeles County
Honorable Richard C. Hubbell, Judge
Los Angeles Superior Court Case No. BC007801
Consolidated With Nos. BC008824 and BC009159

ORDER RE PARTIAL DISMISSAL OF APPEAL AND DIRECTING SUPERIOR COURT TO ENTER NEW JUDGMENT IN FAVOR OF CITY OF DUARTE AND REDEVELOPMENT AGENCY OF THE CITY OF DUARTE

(Filed Apr. 14, 1994)

The parties hereto, having filed a "Joint Application and Stipulation for Partial Dismissal of Appeal With Prejudice, Reversal of Judgment, and Remand to the Superior Court for the County of Los Angeles for Vacation of Judgment and Entry of a New and Different Judgment in Favor of Appellants," and Memorandum of Points and Authorities in Support Thereof;

IT IS ORDERED that:

1. The Judgment entered by the trial court in Los Angeles County Superior Court in Case Nos. BC008824 and BC007801 is hereby reversed and remanded to the trial court with directions to vacate and set aside the Judgment with respect to said cases and to enter the judgment set forth in Exhibit No. 1 hereto. The reversal is pursuant to settlement and does not constitute either approval or rejection of the trial court's prior judgment.

2. The remittitur shall issue forthwith.

3. Each party shall bear its own costs on appeal and attorney's fees.

This Order is entered pursuant to applicable law. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273; *Lara v. Cadag* (1993) 13 Cal.App.4th 1061.)

This Order does not affect or otherwise prejudice the rights of any party in any related appeal.

SO ORDERED.

Dated: APR 14, 1994.

/s/ Hastings	/s/ Woods	/s/ Klein
Justice	Justice	Justice

RUTAN & TUCKER
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CITRUS COMMUNITY COLLEGE DISTRICT, Plaintiff, vs. ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al., Defendants.	CASE NO.: BC 007 801 Consolidated Actions: BC 007 801 BC 008 824 BC 009 159 (Trial Court Delay Reduction Program – Judge Hubbell – Dept. 21)
COUNTY OF LOS ANGELES; LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; LOS ANGELES COUNTY PUBLIC LIBRARY; and CONSOLIDATED FIRE PROTECTION DISTRICT OF LOS ANGELES COUNTY, Plaintiffs,	**JUDGMENT AFTER REMITTITUR** BC 007 801 BC 008 824

vs.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants.

ALICE ALLEN and LAURA FEINNER,

Plaintiffs,

vs.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants.

BC 009 159

The above captioned cases, consolidated under Case No. BC007801, came on regularly for trial on January 27, 1992, in Department 21 of the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C. Hubbell, presiding.

John J. Wagner appeared on behalf of Plaintiff Citrus Community College District ("Citrus") (Case No. BC007801).

De Witt W. Clinton, County Counsel of the County of Los Angeles, by and through Manuel A. Valenzuela, Deputy County Counsel, appeared on behalf of Plaintiffs County of Los Angeles, Los Angeles County Flood Control District, Los Angeles County Public Library, and Consolidated Fire Protection District of Los Angeles County (collectively "County Taxing Entities") (Case No. BC008824).

Jonathan Lehrer-Graiwer and Jonathan Rittmayer appeared on behalf of Plaintiffs Alice Allen and Laura Feinner ("Allen and Feinner") (Case No. BC009159).

Citrus, County Taxing Entities, and Allen and Feinner, are hereinafter referred to collectively as "Plaintiffs."

Jeffrey M. Oderman and Dan Slater appeared on behalf of Defendants City of Duarte and Redevelopment Agency of the City of Duarte (collectively, "Defendants").

On April 27, 1992, judgment in the consolidated actions was entered in favor of Plaintiffs and against Defendants (the "Original Judgment").

Defendants appealed the Original Judgment to the Court of Appeal of the State of California, Second Appellate District, Division Four (2nd Civil No. B067380).

Pursuant to a joint stipulation and request of plaintiffs Citrus and County Taxing Entities, and Defendants, the Court of Appeal entered its order reversing the Original Judgment in Cases Nos. BC007801 and BC008824, issued a remittitur, and directed this Court to vacate and set aside the Original Judgment and enter a new judgment in Cases No.s [sic] BC007801 and BC008824 in favor of Defendants in the form set forth herein.

NOW, THEREFORE, IT IS ORDERED, DECLARED, ADJUDGED, AND DECREED as follows:

1. The Judgment entered by this Court on April 27, 1992, in the consolidated cases denominated as Case No. BC 007801, and consisting of Case Nos. BC007801, BC008824, and BC009159, is hereby vacated and set aside with respect to Cases Nos. BC007801 and BC008824.

2. Judgment is hereby granted, with respect to Case Nos. BC007801 and BC008824, in favor of Defendants City of Duarte and Redevelopment Agency of the City of Duarte.

3. Amendment No. 1 to the Redevelopment Plan to the Rancho Duarte Phase III Redevelopment Project ("Amendment"), and Ordinance No. 666 approving and adopting the Amendment, are hereby declared to be valid, and Defendants City of Duarte and Redevelopment Agency of the City of Duarte are hereby entitled to implement said Amendment and obtain all the benefits accruing thereto, including but not limited to receipt of tax increment revenues pursuant to Health and Safety Code Section 33670(b).

4. Each party in Cases Nos. BC007801 and BC008824 shall bear its own costs of suit and attorney's fees.

Date: _____ _____

Judge

APPENDIX B

RELEVANT STATUTORY PROVISIONS

California Code of Civil Procedure Section 526a provides in part:

> **§ 526a. Action against officer of city or county; precedence of action to enjoin public improvement project**
>
> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . .

California Government Code Section 65589.3 provides:

> **§ 65589.3. Rebuttable presumption of validity of element or amendment in action to challenge housing element**
>
> In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department [of Housing and Community Development] has found that the element or amendment substantially complies with the requirements of this article.

Until Stats. 1993, c. 942 became effective on January 1, 1994, former California Health and Safety Code Section 33012 provided:

§ 33012. Financial burden or detriment.

(a) "Financial burden or detriment" means either of the following:

(1) A net increase in the quality or quantity of a service of the affected taxing entity caused by the redevelopment project.

(2) A loss of property tax revenues by the affected taxing entity produced by a change of ownership or new construction which would have been received, or was reasonably expected to have been received, by the taxing entity if the redevelopment project was not established.

(b) The division of taxes pursuant to Section 33670, by itself, shall not constitute a financial burden or detriment. . . .

Until Stats. 1993, c. 942 became effective on January 1, 1994, former California Health and Safety Code Section 33367(d)(12) provided:

§ 33367. Contents of ordinance adopting plan

The ordinance [adopting a redevelopment plan] shall contain all of the following:

. . .

(d) The findings and determinations of the legislative body that:

(12) The effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only

be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670.

California Health and Safety Code Section 33334.2 provides in part:

§ 33334.2. Housing for persons and families of low or moderate income; findings

(a) Not less than 20 percent of all taxes which are allocated to the [redevelopment] agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105. . . .

California Health and Safety Code Section 33670 provides in part:

§ 33670. Division of taxes levied; allocation

Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing

agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purposes of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after that effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing

agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid. . . .